

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)

Closed Captioning of Video)

Telecommunications for the Deaf, Inc.)
Petition for Rulemaking)

CG Docket No. 05-231

**REPLY COMMENTS
OF ECHOSTAR SATELLITE L.L.C.**

Many comments submitted in this proceeding do not reflect an understanding of the distinction between programming distributors that actually caption the programs received by consumers and pass-through distributors that merely transmit those captioned programs unedited to their subscribers. This apparent misunderstanding has resulted in suggested mandatory requirements that would severely burden pass-through distributors without providing any improvement in the technical quality of captions. EchoStar Satellite L.L.C. (“EchoStar”) hereby responds to some of the comments submitted in the above-referenced proceeding, and urges the Commission to continue to recognize the distinction between programmers that are capable of editing program captions and pass-through distributors that have control only over their transmission equipment when it evaluates the submitted comments.

I. Monitoring and Recordkeeping

Several commenters¹ suggest monitoring and recordkeeping measures that go even beyond that suggested by Telecommunications for the Deaf, Inc. (“TDI”) in its original Petition for Rulemaking² and the Commission’s Notice of Proposed Rulemaking.³ One example is the implementation of daily, logged checks of each program’s captioning.⁴ EchoStar carries over 500 television stations. Performing daily, logged checks of each program provided to subscribers would prove overwhelmingly burdensome for EchoStar and other pass-through distributors. As EchoStar mentioned in its Comments, “24/7” monitoring of every programming stream would require dozens of employees dedicated solely to that task.⁵ While it may be appropriate for individual networks to monitor their outgoing signals for technical captioning problems, pass-through distributors should not be subject to such a rigorous requirement, particularly in light of the fact that they cannot affect the captions that have been included in the programming.

¹ See Comments of the National Court Reporters Association, *filed in* CG Docket No. 05-231, at 7 (filed Nov. 5, 2005) (“NCRA Comments”) (“Requiring distributors to perform daily, logged checks of the captioning to ensure that the captioning is delivered intact to consumers is one possible [monitoring] option.”); *see also* Comments of American Society for Deaf Children, *filed in* CG Docket No. 05-231, at 3 (filed Nov. 10, 2005) (“ASDC Comments”) (“The FCC should require continuous monitoring by video program distributors or providers – and routine checks of their equipment -- to ensure that technical problems are remedied promptly and efficiently.”).

² Telecommunications for the Deaf, Inc., *et al.*, Petition for Rulemaking, RM-11065 (July 23, 2004) (“TDI Petition”).

³ *In the Matter of Closed Captioning of Video Programming, Telecommunications for the Deaf, Inc. Petition for Rulemaking*, CG Docket No. 05-231, Notice of Proposed Rulemaking, 20 FCC Rcd 13211 (2005) (“NPRM”).

⁴ NCRA Comments at 7.

⁵ Comments of EchoStar Satellite L.L.C., *filed in* CG Docket No. 05-231, at 5 (filed Nov. 10, 2005) (“EchoStar Comments”).

Moreover, EchoStar already performs periodic checks of its equipment to ensure that captions included in a station's signal are transmitted to EchoStar's subscribers intact.⁶ These maintenance inspections has enabled EchoStar to remedy technical problems quickly. Additional inspection requirements would not significantly improve the captioning product that is provided to subscribers, but they would impose a significant burden on EchoStar.

One commenter, Global Translation, Inc. ("GTI") suggests that closed caption monitoring can be accomplished through the use of software, and is therefore inexpensive.⁷ This suggestion further demonstrates the apparent misunderstanding of many commenters regarding the capability of pass-through distributors to monitor and remedy technically faulty captions; the software that GTI is referring to must be used at the point captions are added to the programming.⁸ The software would not aid EchoStar in monitoring the captions that it passes through to its subscribers. Furthermore, as EchoStar and others have stated,⁹ such monitoring would not improve EchoStar's ability to remedy technical issues much better than it already does because pass-through distributors are not able to edit the captions they pass through. Under the Copyright Act and many of EchoStar's transmission agreements, EchoStar is forbidden to alter the captioning provided in most of the

⁶ *Id.* at 3-4.

⁷ Comments of Global Translation, Inc., *filed in* CG Docket No. 05-231, at 5 (filed Nov. 10, 2005) ("GTI Comments") ("Because closed captions can be monitored using software, the cost of monitoring is inexpensive.").

⁸ *Id.* See also Global Translation, Inc.'s TranslateTV website, available at <http://www.translatetv.biz/news1.html> ("[Global Translation, Inc.] supplies, installs, and maintains a translation server at the broadcast site that instantly decodes closed captions, translates the text stream, and then re-encodes the results in unused caption fields such as CC2, CC3 and CC4.")

⁹ See EchoStar Comments at 5-6; see also Comments of American Cable Association, *filed in* CG Docket No. 05-231, at 2 (filed Nov. 10, 2005) ("ACA Comments"); Comments of National Cable & Telecommunications Association, *filed in* CG Docket No. 05-231, at 6 (filed Nov. 10, 2005) ("NCTA Comments").

programs it transmits. The Commission's rules¹⁰ currently recognize these limitations by exempting video programming distributors from captioning programming that "is by law not subject to their editorial control."¹¹ Therefore, the suggested monitoring regimes should be disregarded.

II. Complaint Process

A. Receiving a Complaint

Alexander Graham Bell Association for the Deaf and Hard of Hearing recommends use of "an alert button on a website that would allow the consumer to generate a trouble ticket that automatically gets sent to the appropriate staff of the network or cable company to notify them of a problem."¹² Currently, EchoStar provides subscribers the option of raising a technical issue either over the phone or by sending an e-mail to EchoStar's technical support team directly through its website. While EchoStar does not maintain a separate trouble-shooting mechanism for captioning issues, it makes an effort to address promptly any e-mail that is sent to the EchoStar technical support team relating to any technical problem, including captions. This system has proven effective in responding quickly to captioning issues that are caused by EchoStar's equipment. As with any technical problem that its subscribers encounter, EchoStar is dedicated to remedying captioning problems as quickly as possible. Because this system has worked, and allows EchoStar to adapt new

¹⁰ 47 C.F.R. §79.1(e)(9).

¹¹ See 17 U.S.C. §119(a)(4) ("the secondary transmission to the public by a satellite carrier of a performance or display of a work embodied in a primary transmission made by a superstation or a network station is actionable as an act of infringement . . . if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter . . . is in any way willfully altered by the satellite carrier through changes, deletions, or additions . . ."); 17 U.S.C. §122(e); 47 U.S.C. §335(b)(3) (barring a satellite carrier from exerting editorial control over noncommercial education or information programming).

¹² Comments of Alexander Graham Bell Association for the Deaf and Hard of Hearing, *filed in* CG Docket No. 05-231, at 4 (filed Nov. 10, 2005).

response technology when it becomes available, EchoStar requests that the Commission avoid imposing new technical requirements on the complaint response process.

In its Comments, the National Association of Broadcasters (“NAB”) suggests that complaints should be filed with the Commission similar to the process adopted in the Video Description Order.¹³ While EchoStar is open to new methods of streamlining the complaint process and reducing response times, the process NAB is espousing would involve the Commission at an earlier stage than necessary. The consumer would send his or her complaint to the Commission in the first instance, and the Commission would then forward the complaint to the relevant video programming provider.¹⁴ NAB further suggests that the provider be allowed 30 days to respond to the complaint after receipt from the Commission.¹⁵ For the reasons the Commission identified in its First Report and Order,¹⁶ this solution is likely to result in protracted, rather than reduced, response times. Under the current process, a subscriber that identifies a technical problem with his/her captioning can contact EchoStar directly. EchoStar immediately investigates whether its equipment is to blame for the problem. If so, the subscriber’s complaint can be addressed anywhere from a few days to a few hours. If subscribers were to send their complaints to the Commission, the response time will increase. For example, if a subscriber notes problems on Friday evening, a member of the

¹³ Comments of National Association of Broadcasters, *filed in* CG Docket No. 05-231, at 5 (filed Nov. 10, 2005).

¹⁴ *See Implementation of Video Description of Video Programming*, MM Docket No. 99-339, Report and Order, 15 FCC 15230, at ¶45 (2000), *vacated by*, *Motion Picture Association of America v. FCC*, 309 F.3d 796 (D.C. Cir. 2002).

¹⁵ *Id.* (“although there would be some flexibility allowed by authorizing Commission staff to ‘either shorten or lengthen the time required for responding to complaints in particular cases’”).

¹⁶ First Report and Order at ¶ 240 (explaining that filing complaints directly with programming distributors “will lead to quicker action to resolve a complaint than if the complaint were filed directly with the Commission, eliminating any unnecessary administrative burdens for consumers and video programming distributors”).

Commission staff probably will not receive the subscriber's complaint until Monday morning, whereas, EchoStar's technical support personnel may have been able to remedy the problem (assuming it was equipment-related) by Saturday. In the interest of providing the quickest response to consumer's complaints, EchoStar requests that the Commission reject NAB's suggested changes to the complaint process.

The American Society for the Deaf suggested that the Commission create a database of contact information for video programming distributors and programmers that consumers could access when they experience technical problems with their captions.¹⁷ Should the Commission determine that such a database would aid consumers in their efforts to contact distributors, EchoStar would not oppose this suggestion.

B. Responding to a Complaint

Several commenters express support for TDI's suggestion that a programming distributor's time to respond to a complaint be reduced to 30 days.¹⁸ As EchoStar stated in its Comments, the cause of some captioning problems cannot be identified easily, and the current 45 day response period is necessary to allow EchoStar, and other video programming distributors, to investigate the true cause of the problem.¹⁹ As the Accessible Media Industry Coalition recognized in its comments, several events may lead to a problem with the technical quality of captions, including "problems introduced during playback of recorded video at a local or cable distribution point; faulty

¹⁷ ASDC Comments at 1.

¹⁸ See Comments of Alexander Graham Bell Association for the Deaf and Hard of Hearing, *filed in* CG Docket No. 05-231, at 6 (filed Nov. 10, 2005) (supporting a two-tier complaint process and requesting "that programmers be required to expedite resolution of the consumer complaint response time to be completed within 30 days"); *see also* NCRA Comments at 8; ASDC Comments at 2 ("the FCC should change its rules to require responses to complaints on quality issues within 30 days").

¹⁹ EchoStar Comments at 11.

equipment at the local station; faulty distribution equipment at a network; faulty encoding equipment at a network; [or] problems introduced in the delivery of caption data to be encoded.”²⁰ Any one of these problems could be the underlying cause of a particular complaint, and that cause can be identified only after each entity that carried the television signal can be identified. In EchoStar’s experience, this process may take anywhere from a few hours to the full 45-day allotment. Indeed, many of these complaints are resolved within the first few hours or days after EchoStar is notified of a problem.

The National Cable & Telecommunications Association (“NCTA”), while not directly supporting TDI’s proposal, suggests that, after January 1, 2006, when the new captioning benchmark goes into effect, the 45-day response time could begin to run upon receipt of a complaint rather than from the end of the quarter in which the event leading to the complaint occurred for those networks that carry only “new” programs.²¹ While EchoStar also is willing to compromise in an effort to make the closed captioning complaint process more efficient, application of NCTA’s suggested trigger should be limited strictly to those distributors that carry only new programs. Such a limitation is necessary to provide those distributors that carry both pre-rule and new programs the time to identify the source of the captioning problem and implement a fix.

As the Commission noted in its Order on Reconsideration, the response trigger was set to the end of the quarter in which the event occurred for two reasons.²² First, any complaint against a

²⁰ Comments of Accessible Media Industry Coalition, *filed in* CG Docket No. 05-231, at 4 (filed Nov. 9, 2005).

²¹ NCTA Comments at 8 (“the rules could be amended to no longer require complainants to wait for a response until 45 days after the end of the calendar quarter for complaints relating to technical issues or relating to a network’s benchmark compliance where the network provides only ‘new’ programming”).

²² *In the Matter of Closed Captioning and Video Description of Video Programming Implementation of Section 305 of the Telecommunications Act of 1996 Video Programming*

distributor's compliance with the captioning rules could not be determined until the end of the quarter because the number of captioned programs provided was calculated on a quarterly basis.²³ Second, varying response times for different types of complaints likely would confuse both programming providers and consumers.²⁴ It is true that the new captioning benchmark, set to take effect on January 1, 2005, will eliminate these justifications for any provider that offers only new programs. However, programming providers that continue to offer both new and pre-rule programming, must continue to meet certain quarterly compliance requirements.²⁵ Therefore, in the case of complaints alleging a rule violation, a provider will not be able to address such a complaint until it has determined the total number of pre-rule programs it captioned over the quarter. Thus, the potential for confusion remains, and the Commission should not alter the response times for those video programming distributors that provide both new and pre-rule programming.

Accessibility, MM Docket No. 95-176, Order on Reconsideration, 13 FCC Rcd 19973, at ¶116 (1998) ("Reconsideration Order")

²³ *Id.*

²⁴ *Id.*

²⁵ See 47 C.F.R. §79.1(c)(2)(ii) ("As of January 1, 2008, and thereafter, 75% of the programming distributor's pre-rule nonexempt video programming being distributed and exhibited on each channel during each calendar quarter must be provided with closed captioning.").

III. Conclusion

EchoStar urges the Commission to take the foregoing reply comments into account in its evaluation of the current closed captioning regime.

Respectfully submitted,

/s/

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